

ASSEMBLY BILL

No. 2339

Introduced by Assembly Member Quirk

February 21, 2014

An act to amend Section 1203.2 of the Penal Code, relating to criminal defendants.

LEGISLATIVE COUNSEL'S DIGEST

AB 2339, as introduced, Quirk. Criminal defendants: supervision: summary revocation: tolling.

Existing law allows a probation officer, parole officer, or peace officer to arrest a person without warrant or other process during the period that a person is released on probation, conditional sentence or summary probation, mandatory supervision, postrelease community supervision, or parole supervision, if the officer has probable cause to believe that the supervised person is violating the terms of his or her supervision. Under existing law, the revocation of supervision, summary or otherwise, serves to toll the running of the period of supervision.

This bill would require that all the terms and conditions of supervision remain in effect during the time period that the running of the period of supervision is tolled.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1203.2 of the Penal Code is amended to
2 read:

1 1203.2. (a) At any time during the period of supervision of a
2 person (1) released on probation under the care of a probation
3 officer pursuant to this chapter, (2) released on conditional sentence
4 or summary probation not under the care of a probation officer,
5 (3) placed on mandatory supervision pursuant to subparagraph (B)
6 of paragraph (5) of subdivision (h) of Section 1170, (4) subject to
7 revocation of postrelease community supervision pursuant to
8 Section 3455, or (5) subject to revocation of parole supervision
9 pursuant to Section 3000.08, if any probation officer, parole officer,
10 or peace officer has probable cause to believe that the supervised
11 person is violating any term or condition of his or her supervision,
12 the officer may, without warrant or other process and at any time
13 until the final disposition of the case, rearrest the supervised person
14 and bring him or her before the court or the court may, in its
15 discretion, issue a warrant for his or her rearrest. Upon such
16 rearrest, or upon the issuance of a warrant for rearrest the court
17 may revoke and terminate the supervision of the person if the
18 interests of justice so require and the court, in its judgment, has
19 reason to believe from the report of the probation or parole officer
20 or otherwise that the person has violated any of the conditions of
21 his or her supervision, has become abandoned to improper
22 associates or a vicious life, or has subsequently committed other
23 offenses, regardless whether he or she has been prosecuted for
24 such offenses. However, the court shall not terminate parole
25 pursuant to this section. Supervision shall not be revoked for failure
26 of a person to make restitution imposed as a condition of
27 supervision unless the court determines that the defendant has
28 willfully failed to pay and has the ability to pay. Restitution shall
29 be consistent with a person's ability to pay. The revocation,
30 summary or otherwise, shall serve to toll the running of the period
31 of supervision. *All terms and conditions of supervision shall remain*
32 *in effect during the time period that the running of the period of*
33 *supervision is tolled.*

34 (b) (1) Upon its own motion or upon the petition of the
35 supervised person, the probation or parole officer, or the district
36 attorney, the court may modify, revoke, or terminate supervision
37 of the person pursuant to this subdivision, except that the court
38 shall not terminate parole pursuant to this section. The court in the
39 county in which the person is supervised has jurisdiction to hear
40 the motion or petition, or for those on parole, either the court in

1 the county of supervision or the court in the county in which the
2 alleged violation of supervision occurred. A person supervised on
3 parole or postrelease community supervision pursuant to Section
4 3455 may not petition the court pursuant to this section for early
5 release from supervision, and a petition under this section shall
6 not be filed solely for the purpose of modifying parole. Nothing
7 in this section shall prohibit the court in the county in which the
8 person is supervised or in which the alleged violation of supervision
9 occurred from modifying a person's parole when acting on the
10 court's own motion or a petition to revoke parole. The court shall
11 give notice of its motion, and the probation or parole officer or the
12 district attorney shall give notice of his or her petition to the
13 supervised person, his or her attorney of record, and the district
14 attorney or the probation or parole officer, as the case may be. The
15 supervised person shall give notice of his or her petition to the
16 probation or parole officer and notice of any motion or petition
17 shall be given to the district attorney in all cases. The court shall
18 refer its motion or the petition to the probation or parole officer.
19 After the receipt of a written report from the probation or parole
20 officer, the court shall read and consider the report and either its
21 motion or the petition and may modify, revoke, or terminate the
22 supervision of the supervised person upon the grounds set forth in
23 subdivision (a) if the interests of justice so require.

24 (2) The notice required by this subdivision may be given to the
25 supervised person upon his or her first court appearance in the
26 proceeding. Upon the agreement by the supervised person in
27 writing to the specific terms of a modification or termination of a
28 specific term of supervision, any requirement that the supervised
29 person make a personal appearance in court for the purpose of a
30 modification or termination shall be waived. Prior to the
31 modification or termination and waiver of appearance, the
32 supervised person shall be informed of his or her right to consult
33 with counsel, and if indigent the right to secure court appointed
34 counsel. If the supervised person waives his or her right to counsel
35 a written waiver shall be required. If the supervised person consults
36 with counsel and thereafter agrees to a modification, revocation,
37 or termination of the term of supervision and waiver of personal
38 appearance, the agreement shall be signed by counsel showing
39 approval for the modification or termination and waiver.

1 (c) Upon any revocation and termination of probation the court
2 may, if the sentence has been suspended, pronounce judgment for
3 any time within the longest period for which the person might have
4 been sentenced. However, if the judgment has been pronounced
5 and the execution thereof has been suspended, the court may revoke
6 the suspension and order that the judgment shall be in full force
7 and effect. In either case, the person shall be delivered over to the
8 proper officer to serve his or her sentence, less any credits herein
9 provided for.

10 (d) In any case of revocation and termination of probation,
11 including, but not limited to, cases in which the judgment has been
12 pronounced and the execution thereof has been suspended, upon
13 the revocation and termination, the court may, in lieu of any other
14 sentence, commit the person to the Department of Corrections and
15 Rehabilitation, Division of Juvenile Facilities if he or she is
16 otherwise eligible for such commitment.

17 (e) If probation has been revoked before the judgment has been
18 pronounced, the order revoking probation may be set aside for
19 good cause upon motion made before pronouncement of judgment.
20 If probation has been revoked after the judgment has been
21 pronounced, the judgment and the order which revoked the
22 probation may be set aside for good cause within 30 days after the
23 court has notice that the execution of the sentence has commenced.
24 If an order setting aside the judgment, the revocation of probation,
25 or both is made after the expiration of the probationary period, the
26 court may again place the person on probation for that period and
27 with those terms and conditions as it could have done immediately
28 following conviction.

29 (f) As used in this section, the following definitions shall apply:

30 (1) "Court" means a judge, magistrate, or revocation hearing
31 officer described in Section 71622.5 of the Government Code.

32 (2) "Probation officer" means a probation officer as described
33 in Section 1203 or an officer of the agency designated by the board
34 of supervisors of a county to implement postrelease community
35 supervision pursuant to Section 3451.

36 (3) "Supervised person" means a person who satisfies any of
37 the following:

38 (A) He or she is released on probation subject to the supervision
39 of a probation officer.

1 (B) He or she is released on conditional sentence or summary
2 probation not under the care of a probation officer.

3 (C) He or she is subject to mandatory supervision pursuant to
4 subparagraph (B) of paragraph (5) of subdivision (h) of Section
5 1170.

6 (D) He or she is subject to revocation of postrelease community
7 supervision pursuant to Section 3455.

8 (E) He or she is subject to revocation of parole pursuant to
9 Section 3000.08.

10 (g) Nothing in this section affects the authority of the supervising
11 agency to impose intermediate sanctions, including flash
12 incarceration, to persons supervised on parole pursuant to Section
13 3000.8 or postrelease community supervision pursuant to Part 3
14 (commencing with Section 3450) of Title 2.05.